

MTSBA Concerns on HB 555

1. MTSBA has no position on this bill. A resolution urging support for the proposition was brought before our membership and failed on a split vote. We have members that oppose and members that support the concept.
2. If the bill is to pass and provide meaningful protection and guidance to circumstances where the presiding officer of both the elementary and high school boards is a trustee who is a member of only the high school board, the bill should be amended to provide the following:
 - a. **Indemnification and defense of the chair.** Because the chair in the circumstances identified in HB 555 is not technically a member of the elementary district board over which he or she is presiding, it is doubtful that the person would enjoy the personal immunity for his or her decisions under 20-3-332 and 2-9-305, MCA.

20-3-332. Personal immunity of trustees. (1) *When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.*

(2) *The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.*

- b. The right and obligation to view confidential information necessary to make a determination on Executive Session under 2-3-203, MCA. Again, because the chair in the circumstances specified in HB 555 is not technically a member of the elementary district board over which he is presiding, the bill may place the district in a catch-22 in regards to circumstances where an executive session is warranted. The only way that a school board can convene in executive session is if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The problem is, the presiding officer in these instances will not have authority under the bill as drafted to review the confidential information necessary to make an informed decision regarding whether the standard set forth in 2-3-203 has been met.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then ***if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.*** The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be

HOUSE BILL NO. 555

INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ANY SCHOOL BOARD TRUSTEE OF CERTAIN DISTRICTS TO PRESIDE OVER THE BOARD; AND AMENDING SECTIONS 20-3-321, 20-3-351, AND 20-3-352, MCA."

WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school trustees known as additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect an additional high school trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law does not allow additional high school trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, under a combined school board an elementary school district's integrity of governance can be protected by not allowing an additional high school trustee who is presiding over the board to vote on matters that pertain only to the elementary school district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-3-321, MCA, is amended to read:

"20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day

and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of May. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) An additional trustee as provided in 20-3-352(2) may serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a) ~~but~~ . **IN SUCH INSTANCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE ADDITIONAL TRUSTEE SERVING AS CHAIR SHALL BE AFFORDED ALL RIGHTS AND PRIVILEGES OF ANY TRUSTEE OF THE ELEMENTARY DISTRICT, INCLUDING WITHOUT LIMITATION THE RIGHT TO PERSONAL IMMUNITY UNDER 20-3-332, MCA AND THE RIGHT TO REVIEW CONFIDENTIAL INFORMATION NECESSARY TO MAKE A DETERMINATION REGARDING WHETHER AN EXECUTIVE SESSION OF THE BOARD IS WARRANTED PURSUANT TO 2-3-203(3), MCA. THE** the additional trustee may not vote on issues pertaining only to the elementary district."

Section 2. Section 20-3-351, MCA, is amended to read:

"20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which

the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

(3) The trustees of an elementary district described in subsection (1)(a) may have as their presiding officer an additional trustee as determined by 20-3-352(2) but. IN SUCH INSTANCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE ADDITIONAL TRUSTEE SERVING AS CHAIR SHALL BE AFFORDED ALL RIGHTS AND PRIVILEGES OF ANY TRUSTEE OF THE ELEMENTARY DISTRICT, INCLUDING WITHOUT LIMITATION THE RIGHT TO PERSONAL IMMUNITY UNDER 20-3-332, MCA AND THE RIGHT TO REVIEW CONFIDENTIAL INFORMATION NECESSARY TO MAKE A DETERMINATION REGARDING WHETHER AN EXECUTIVE SESSION OF THE BOARD IS WARRANTED PURSUANT TO 2-3-203(3), MCA. THE ~~the~~ additional trustee may not vote on issues pertaining only to the elementary district."

Section 3. Section 20-3-352, MCA, is amended to read:

"20-3-352. Request and determination of number of high school district additional trustee positions -- nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the

trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(e) An additional trustee may serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a) ~~but~~ . IN SUCH INSTANCES, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE ADDITIONAL TRUSTEE SERVING AS CHAIR SHALL BE AFFORDED ALL RIGHTS AND PRIVILEGES OF ANY TRUSTEE OF THE ELEMENTARY DISTRICT, INCLUDING WITHOUT LIMITATION THE RIGHT TO PERSONAL IMMUNITY UNDER 20-3-332, MCA AND THE RIGHT TO REVIEW CONFIDENTIAL INFORMATION NECESSARY TO MAKE A DETERMINATION REGARDING WHETHER AN EXECUTIVE SESSION OF THE BOARD IS WARRANTED PURSUANT TO 2-3-203(3), MCA. THE ~~the~~ additional trustee may not vote on issues pertaining only to the elementary district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among

1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period."

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